UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DAWN BEYE, ET AL.,	:	**Civil Action No. 06-5337 (FSH)**
Plaintiffs	:	
v.	:	
HORIZON BLUE CROSS BLUE SHIELD OF NEW JERSEY,	:	**ORDER**
Defendant	:	

This matter having come before the Court by way of the plaintiffs' motion for reconsideration of a portion of the Order entered October 30, 2007, which granted defendant's request that the plaintiff produce emails, journals, diaries and communications [hereinafter "writings"] concerning the plaintiffs' beneficiaries' eating disorders or manifestations/symptoms thereof, and related health conditions;

and the Court having considered the October 30, 2007 Order, the record of proceedings, and the parties submissions;[1]

[1]In support of their motion, the plaintiffs argue that the Court should reconsider this portion of October 30, 2007 Order because disclosure of these materials would harm their beneficiaries' health, negatively impact their recovery, and place them at risk for relapse. In support of this argument, plaintiffs present the certifications of mothers of three of the beneficiaries and Jennifer Libby, a clinical social worker who is providing services to two of the beneficiaries. Plaintiffs contend that because of the protocol for raising discovery disputes, they did not have an opportunity to present these certifications before the Court issued its October 30, 2007 Order and that their contents were therefore not considered when the Court ruled. The plaintiff further assert that these certifications demonstrate how the writings are therapy tools meant for self-reflection and not disclosure to others and disclosure of these materials would cause the minors stress, anxiety, and present a potential for relapse. In addition, the plaintiffs contend that requiring disclosure would force the plaintiffs to choose either to breach the trust of

and a Motion for Reconsideration (a.k.a. Motion for Reargument)[2] being governed by Local Civil Rule 7.1(i);

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their child or forgo seeking to seek coverage for the child's eating disorder. The plaintiffs argue that the contents of these writings are not relevant to whether or not the defendant breached its insurance contract or acted in an arbitrary or capricious fashion because the core issue is whether or not eating disorders are nonbiologically based mental illnesses and that proof about the cause of the condition will come from experts. Moreover, the plaintiffs argue that the insurance company has not disputed that the beneficiaries suffer from eating disorders and its decision at the administrative level did not involve considerations of such writings and, in any event, there is no reason to require disclosure of writings that post-date the date for which plaintiff seeks coverage. Finally, plaintiffs contend that information concerning the beneficiaries reports of their conditions and symptoms can be gleaned from their parents and the professionals who are treating them.

In opposition, the defendant argues that the Order should remain unchanged because the Court did not overlook any materials that were presented before it ruled and nothing precluded the plaintiffs presenting the certifications when the dispute was first raised. In addition, defendant argues that even if the court were to consider the certifications and the concerns that are described therein, the Court must balance the potential injury against the defendant's need for the information. The defendant asserts that its need for this information outweighs plaintiffs' concerns because: (1) defendant has been barred from deposing the beneficiaries; (2) information in the writings may prove or disprove the plaintiffs' view that eating disorders are not caused by biological factors because they will shed light on how the beneficiary described her symptoms or the manifestation of what has been labeled an eating disorder; (3) the writings are likely to be more comprehensive and hence provide more insight into their conditions than the medical records' "bare boned accounts" of patients' conditions; and (4) the facts contained in these writings may be relevant for the experts to consider. The defendant also argues that there is no other source for this information. They note that they are barred from deposing these individuals and their parents and the clinical social worker apparently have not read the writings and therefore cannot share their contents.

Finally, defendant argues that the privacy concerns implicated by disclosing this material have been addressed by: (1) limiting the material to only that reflect their eating disorders or the manifestations or symptoms and related health conditions; and (2) limiting the individuals who can be privy to the information and how it can be used.

[2]Local Civil Rule 7.1, comment 6(a); see, e.g., Hernand v. Beeler, 129 F. Supp. 2d 698, 701 (D.N.J. 2001) (noting that the terms reargument and reconsideration are used interchangeably and that Rule 7.1(i) governs both).

and Local Civ. R. 7.1(i) providing for the reargument of an order if the motion for the same is filed within 10 days (excluding weekends and holidays) after entry of the disputed order;

and the docket reflecting that the Order was entered on October 30, 2007 and the motion for reconsideration was filed on November 14, 2007 and, excluding the weekends and holidays, and hence was timely filed;

and the Court noting that the purpose of a motion for reconsideration is "to correct manifest errors of law or fact or to present newly discovered evidence," Harsco Corp. v. Zlotnicki, 779 F.2d 906, 909 (3d Cir. 1985); see also Shoenfeld Asset Mgt. v. Cendent Corp., 161 F. Supp. 2d 349, 352 (D.N.J. 2001); Yurecko v. Port Authority Trans-Hudson, 2003 WL 22001196, at * 2 (D.N.J. Aug. 18, 2003);

and a court may grant a properly filed motion for reconsideration for one of three reasons: (1) an intervening change in the controlling law has occurred; (2) evidence not previously available has become available; or (3) it is necessary to correct a clear error of law or prevent manifest injustice, see Database America v. Bellsouth Advertising & Publ'g., 825 F. Supp. 1216, 1220 (D.N.J. 1993)(citing Weyerhaeuser Corp. v. Koppers Co., 771 F. Supp. 1406, 1419 (D. Md. 1991)); Carmichael v Everson, 2004 WL 1587894 (D.N.J. 2004);

and Local Civ. R. 7.1(i) requiring that the moving party set forth "concisely the matters or controlling decision which counsel believes the [Court] has overlooked," G-69 v. Degnan, 748 F. Supp. 274, 275 (D.N.J. 1990);

and a motion for reconsideration being improper when it is used "to ask the Court to rethink what it had already thought through -- rightly or wrongly," see Ciba-Geigy Corporation v. Alza Corporation, 1993 WL 90412, at *1 (D.N.J. Mar. 25, 1993) (quoting Oritani Sav. & Loan v.

Fidelity & Deposit Co., 744 F. Supp. 1311, 1314 (D.N.J. 1990), rev'd on other grounds, 989 F.2d 635 (3d Cir. 1993);

and because reconsideration of a judgment after its entry is an extraordinary remedy, motions to reconsider or reargue are granted "very sparingly," Maldonado v. Lucca, 636 F. Supp. 621, 630 (D.N.J. 1986); Damiano v. Sony Music Entm't, Inc., 975 F. Supp. 623, 634 (D.N.J. 1996);

and the movant not arguing that there has been an intervening change in the law or that reconsideration is necessary to avoid a manifest injustice;

and the Court finding that certifications submitted in support of the motion do not constitute newly available evidence;

and for the reasons set forth herein;[3]

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[3]The Court finds that there is no basis to completely reconsider and vacate the portion of the October 31, 2007 Order concerning the writings. First, the certifications do not constitute newly available evidence. The certifications are those from the plaintiffs themselves and a clinical social worker who previously provided their opinions concerning the impact of deposing the minor beneficiaries. The information in the present certifications is very similar to that presented in support of the application to preclude the depositions of the minors Thus, this is not evidence that recently became available to the plaintiffs and hence does not constitute newly discovered evidence. Second, the assertion that the plaintiffs did not have an opportunity to present the certification when the discovery dispute was initially presented is also without basis. There is nothing in the joint letter protocol that precludes a party from presenting information that supports its position. Thus, if the plaintiffs believed that these certifications were important to their arguments, there was nothing preventing them from presenting them as part of the joint submission. Third, the Court did not overlook the essence of what the certifications convey: the impact of disclosures upon the minors. The Court had the benefit of very similar certifications when it considered the request to preclude the minor's depositions and its oral opinion reflected that it has been mindful of these matters. See, e.g., Transcript, dated October 30, 2007 at 19-20 (stating that "in light of the opposition to deposing the [beneficiaries]" the writings "will provide a snap shot [about their eating disorders or manifestations or symptoms and related health conditions] without requiring them to proceed through the deposition process.")

Moreover, while the certifications embody what appear to be sincere concerns about the and for good cause shown

IT IS on this 12th day of December, 2007

ORDERED that the Beye plaintiffs' motion for reconsideration of the Order dated October 31, 2007 [Docket Entry No. 65] is denied, except that the October 31, 2007 Order shall be modified as follows: (1) no later than **January 15, 2008**, plaintiffs shall produce writings

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impact of disclosures, this is not sufficient to preclude the discovery in its entirety. The Court has already precluded the beneficiaries' depositions at this time because it was persuaded that the burden of that process outweighed the importance of the information that would have been gleaned, particularly given the existence of other sources of information concerning how the plaintiffs' beneficiaries described their symptoms and manifestations. See Opinion and Order, dated September 17, 2007. Among other things, the defendants' experts will have an opportunity to speak to and examine the beneficiaries . In addition, their parents will be deposed about the beneficiaries and can be asked about statements the beneficiaries made their parents even in confidence. The materials at issue are likely similarly viewed by the minors as confidential but that does not make them any less valuable source of information. Thus, even though there are sensitive issues associated with disclosure of the information, the certifications would not support a total bar on the production of the writings. Thus, even if the certifications that were submitted with this motion were submitted at the time the dispute was first presented, the determination would have been the same.

Finally, the plaintiffs did not provide any law that has been overlooked nor have they argued that a miscarriage of justice would result if the Court did not reconsider the ruling. While the plaintiffs suggest that allowing the Order to stand may require the plaintiffs to have to choose between pursuing this litigation or disclosing private information about their child, that decision was made when the plaintiffs decide to file an action which required them to disclose information concerning their children's eating disorders, something that they have described as an extremely sensitive topic.

The Court has nonetheless reviewed the discovery demand in light of the current status of the case and, while it declines to vacate the Order, it has modified the information that must be disclosed. The Court will require production of entries on webpages such as "MySpace" or "Facebook" that the beneficiaries shared with others. The privacy concerns are far less where the beneficiary herself chose to disclose the information. In addition, journals or writings that have been shared with other health professionals who have treated the beneficiaries shall be provided to the defendants' experts as they would be part of their medical records. As to writings not shared with others, such as diaries and journals, the plaintiffs shall ensure they are preserved. The Court will entertain an application for production if the defendants' experts conclude that such writings are needed for them to render an opinion.

shared with others including entries on websites such as “Facebook” or “MySpace”; (2) plaintiffs shall preserve journals, diaries and writings not shared with others and if defendants’ experts believe they are needed to render an opinion then they can make an application seeking their production; and (3) writings shared with health care professionals shall be produced as part of the medical records.

s/ Patty Shwartz
United States Magistrate Judge